

LICENSING AND REGULATION COMMITTEE

7 August 2006

GAMBLING ACT STATEMENT OF PRINCIPLES – CONSULTATION DRAFT

REPORT OF THE CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Under the Gambling Act 2005, the City Council as licensing authority is required to publish a statement of principles, which sets out the Council's approach to licensing issues under the Act. Prior to publishing the statement, a consultation exercise must be carried out.

A draft Statement has been prepared, and is attached as Appendix 1 to this report. The report summarises the key points of the new licensing system, and the Council's role. It also sets out the consultation process leading to adoption.

The draft Statement includes a scheme of delegation which mirrors the scheme set up for the Licensing Act 2003. A separate report formally setting out these delegation arrangements and covering the necessary changes to the Constitution will be put before a future meeting of the Committee.

RECOMMENDATIONS:

- 1 That the draft Statement of Principles attached at Appendix 1 be approved for publication as a consultation draft.
- 2 That the consultation process for the draft Statement of Principles set out in Section 7 of this report be agreed.

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DETAIL:

1 Introduction

- 1.1 The Gambling Act 2005 repeals previous gambling legislation and consolidates it into one Act covering most categories of gaming activities. A new body, the Gambling Commission, has been established to licence gambling operators. For some time, local authorities have had certain powers in respect of gambling (notably small lotteries and low value gaming machines in non-licensed premises), and these powers are extended to give the City Council (as licensing authority) a wider role, and new enforcement powers.
- 1.2 The Act has similarities with the Licensing Act, in terms of the structure of the application process, and basic concepts. However, there are also important distinctions between the two, which need to be borne in mind.
- 1.3 The Act contains three licensing objectives that will underpin the functions that the Commission and Licensing Authorities perform and which are central to the new regulatory regime. They are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
 - ensuring that gambling is conducted in a fair and open way
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 1.4 Under Section 349 of the Act, the City Council is under a duty to prepare and publish a statement of the principles every three years, setting out the principles which it proposes to apply in carrying out its functions under the Act. The Statement must be in place by no later than 3 January 2007. The concept of the Statement is similar to that of the Licensing Policy adopted under the Licensing Act 2003.
- 1.5 Prior to determining the Statement, the Council must carry out a consultation exercise, and consider the views of various individuals and groups before the policy is published. This report sets out the key concepts behind the new Act, and seeks approval to a draft Statement for consultation purposes.

2 Operation of the Gambling Act

The Gambling Commission

- 2.1 The Act creates a new body (the Gambling Commission) which has a central role in the regulation of gambling. It takes over the functions of the old Gaming Board, but also has new powers and duties, to allow the new system to operate properly. The

powers include the issuing of Guidance (to which regard must be had by applicants and licensing authorities), and granting of operator and personal licences to those companies and individuals engaged in providing gambling services.

- 2.2 The Commission will regulate the main forms of commercial gambling, including casinos, bingo, betting, pool betting, larger charity lotteries, gaming machine manufacturers and suppliers. "Remote Gambling" (such as betting using the internet and telephone) will also be regulated by the Commission. It will issue Codes of Practice and Guidance to Local Authorities and trade in relation to their licensing responsibilities. Finally, it will have powers of entry and inspection to regulate gambling.

Licensing Authorities

- 2.3 Licensing Authorities (which are the same authorities as under the Licensing Act 2003) also have a role to play. They will issue premises licences to premises where gambling is to take place, and also issue permits for certain other types of gambling activity. As has already been noted, they must issue a Statement setting out the principles they will follow in carrying out these functions.

- 2.4 The functions of the City Council will include:-

- Preparing a Gambling Licensing Policy and reviewing it every 3 years;
- Dealing with and regulating the following licences notices permits and activities:-
 - premises licences for gambling activities;
 - notices given for the temporary use of premises for gambling;
 - permits for gaming and gaming machines in clubs ;
 - gaming and gaming machines in alcohol licensed premises;
 - permits to family entertainment centres for the use of certain lower stake gaming machines;
 - permits for prize gaming;
 - occasional use notices for betting at tracks; and
 - registering small societies' lotteries
- Deciding whether or not to permit new casino premises in their area;
- Monitoring and inspection of premises to ensure licence conditions are complied with;
- Ensuring applications are adequately consulted with Interested Parties (residents/those affected by the gambling premises) and Responsible Authorities (Statutory consultees such as police, fire, planning etc);
- Appointing a Licensing Committee made up of local Councillors to determine applications that receive representations (the same committee established under the Licensing Act).

- 2.5 As in the case of the Licensing Act 2003, certain matters (e.g. the approval of the Statement of Principles, and a decision on a "no casinos" resolution) are reserved to Full Council by the Gambling Act. Other matters may be decided by the Licensing Committee (i.e. Licensing and Regulation Committee) or a Sub-Committee (i.e. the Licensing Sub-Committee of three Members). All other matters would be delegated to officers.

- 2.6 The draft Statement includes a proposed delegation scheme, which mirrors that of the Licensing Act, and which is considered to be appropriate given the number and type of applications and decisions required. The delegation scheme will need to be formally approved in due course, and relevant amendments to the Constitution made. At this stage, Members are asked to agree the delegation proposals for consultation purposes, but if they have any concerns about the extent of the proposed delegations, these can be dealt with at the meeting.

Regulations and Guidance

- 2.7 Like the Licensing Act, the Gambling Act sets the framework for the new system to operate. Under the Act, regulations governing matters such as fees, application procedures, and hearings, are to be made. The Guidance issued by the Commission must be taken into account by licensing authorities when carrying out their functions under the Act.

3 Licences, Conditions and Variations

- 3.1 From the first day of the Act is in operation in September 2007, all previous licences issued by the Magistrates' Courts will be abolished and replaced with the new Operating and Premises licences. The Gambling Commission will issue Operating Licences and Licensing Authorities will issue Premises Licences.

- 3.2 To apply for a Premises Licence, the Licensee will have to hold an Operating Licence. There will be two types of conditions attached to Premises Licences; these are Mandatory and Default conditions:

- Mandatory – These are conditions made by the Secretary of State with the intention that no further regulation is required;
- Default – Licensing Authorities have more flexibility in relation to default conditions and may exclude or substitute them with others that are either more or less restrictive. In excluding or substituting default conditions, the Licensing Authority will have clear regulatory reasons for doing.

- 3.3 The Department for Culture Media and Sport (DCMS) are yet to formally consult on draft Mandatory and Default conditions, although they are likely to cover a variety of issues such as automated gaming tables in casinos, location of ATMs, layout of premises, numbers of betting receipt terminals, access to premises, limitations on provisions food and refreshment and signage. All licensees will receive standard licensing hours as a default condition on their Premises Licence, although they can apply to the Licensing Authority to vary them.

4 Impact of the Act in Winchester

- 4.1 The Act is likely to have a limited impact on the City Council, due to the type and level of gambling which occurs in the district. There are no casinos built or planned in Winchester, nor are there any bingo halls or amusement arcades.

- 4.2 It is estimated that there are 3 betting shops, approximately 20 premises such as takeaways, etc. with gaming machines, and approximately 150 pubs and clubs with gaming machines. The Council already licenses small society lotteries, of which there are around 150.

5 Types of Premises and Gambling Activities

- 5.1 The Act defines various premises where gambling takes place, and the activities which will be regulated under the Act. This section gives brief details of these premises and activities.

Casinos

- 5.2 These are large gambling establishments, operating “casino games”, which essentially are games of chance which involve playing or staking against a bank.
- 5.3 The Act permits the creation of 17 new casinos: 8 Small, 8 Large and 1 Regional, although this could be extended in the future. Winchester did not promote a casino in its area.
- 5.4 Local Authorities have powers under the Act to pass a three-year ‘No Casinos’ resolution, which must be endorsed by Full Council. The City Council has not passed such a resolution, and it is not proposed to do so at this stage, given the unlikelihood of an operator seeking to establish a casino in the District. If an application for a premises licence is received, it would be dealt with taking into account the Guidance and the impact on the Licensing Objectives.

Gaming Machine Categories

- 5.5 Under the Act, gaming machines such as one armed bandits are categorised as A, B, C or D. The category into which a particular machine falls depends on the maximum amount of each stake which can be paid into the machine, and the maximum value of the prize which can be paid out, with Category A machines having unlimited stakes/prizes, and Category D machines having the lowest (10p stake (30p for non-cash prize), and £5 cash/£8 non-cash maximum prize). Category B machines are broken down further into sub-categories.
- 5.6 Only players over 18 may play machines in Categories A, B, or C. There are also limits on the numbers of machines in a particular premises, depending on how the premises are licensed.

Adult Gaming Centres

- 5.7 This is a new category of premises introduced by the Act. Such premises may operate gaming machines in Categories B C, or D, and therefore can only be accessed by adults over 18. Up to four Category B machines may be provided, with no limit on Category C and D machines. There are no premises currently operating in this way in the District.

Family Entertainment Centres – Licensed and Unlicensed

- 5.8 Family Entertainment Centres (FECs) fall into two sub-types, licensed and unlicensed. Arcades found at the seaside and in airports and motorway service areas would normally be classed as FECs. By definition, children may enter these Centres, whether or not they are accompanied by an adult, although they may be restricted to certain areas of the premises. The arcades licensed by the Council at the M3 Services at Winchester North would fall into this classification.

- 5.9 Licensed FECs may provide Category C or D machines, but must restrict C machines to a designated area and limit access to this area to over 18s only. Licensed FECs require a operators licence (from the Commission) and a premises licence (from the City Council), to which conditions may be attached.
- 5.10 Unlicensed FECs can only offer Category D machines, although there is no limit on the number of machines which can be provided. A Gaming Machine Permit (issued by the City Council) must be in force for the premises. Permits may be granted or refused, but cannot have conditions attached to them. The Police must be consulted before an application for a permit is granted, and the permit has effect for 10 years.

Bingo

- 5.11 Bingo is not defined, but can comprise cash bingo (where the cash prizes are made up of the stakes paid) and prize bingo (where the prize offered is not related to the stakes paid).
- 5.12 There are no commercial bingo halls in the District. Under the Act, Adult Gaming centres, FECs, and Travelling fairs will be able to offer prize bingo within the general authorisations (premises licence/permit) under which they operate. It is therefore unlikely that specific applications for premises licences for bingo will need to be dealt with.

Betting Premises

- 5.13 Betting premises are the traditional betting shops on the high street, away from a racing track venue. Premises Licences will be issued by the City Council for such premises. Children will not be permitted to enter betting premises. Conditions may be imposed on the premises licence, and the operator may offer gaming machines as well as betting facilities (up to four in Categories B C or D).
- 5.14 It is understood there are only three such premises in the District.

Tracks

- 5.15 Tracks are racecourses used for racing by horses and dogs. Although provisions are included in the draft Statement to cover tracks (based on the LACORS template and Hampshire model), this report does not cover tracks in detail, as there are none in the District, and it is unlikely that such premises would be proposed in the future.

Travelling Fairs

- 5.16 Travelling fairs may provide gambling by Category D machines (without limit as to numbers), or by prize gaming, without a permit, provided they comply with certain restrictions. Gambling must be an ancillary amusement at the fair for this exception to apply.
- 5.17 A single piece of land can only be used as a Travelling Fair for no more than 27 days per calendar year. Otherwise, a premises licence or permit would be required.

Prize Gaming

- 5.18 Prize gaming is defined in the Act as gambling where the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. The prizes will be determined by the operator before play commences.
- 5.19 A Prize Gaming Permit will authorise the use of premises for this purpose. The permit is issued by the City Council, and applications may be granted or refused, although conditions cannot be attached. The Police must be consulted, and if granted, the permit lasts for ten years. A permit can only be refused after the applicant has had an opportunity to make representations against the proposal to refuse the application. Any permit will lapse if the holder ceases to occupy the premises.
- 5.20 The draft Statement includes the suggested principles which the City Council would apply in determining applications for permits.

Alcohol-licensed premises

- 5.21 The Act provides an automatic entitlement (subject to the premises serving notice on the City Council) to the provision of two Category C machines on premises licences to sell alcohol on (as opposed to off) the premises. The Council cannot reject such a notification, although it can by order remove the right, subject to a prescribed procedure being followed.
- 5.22 In place of the automatic right, alcohol-licensed premises can apply to the City Council for a permit to provide Category C or D machines. The Council can grant or refuse the application, and can impose conditions limited the number and category of machines. Such permits enure for as long as the (Licensing Act) premises licence is held by the applicant. Where the premises licence is transferred, the permit lapses and would to be applied for again, unless an application is made beforehand to transfer the permit.

Gaming machines in Takeaways, Taxi Offices, etc

- 5.23 Under the existing legislation, the City Council has granted permits for fruit machines in premises such as takeaways, taxi offices, etc. Permits for similar machines in pubs were granted by the Licensing Justices and effectively will be continued under the new provisions governing alcohol-licensed premises (see previous paragraph).
- 5.24 With the transition to the new Act, renewals of existing permits will not be permitted after 1 August 2006. After that date, permits will expire as they fall for renewal, and cannot be renewed thereafter. From 31 July 2009, any permits still remaining in force will expire and it will be unlawful to provide fruit machines in these premises.

Club Gaming

- 5.25 Clubs are able to apply for club gaming permits to allow them to provide gaming machines on the premises. This would allow (subject to conditions) machines in categories B, C and D to be provided.
- 5.26 Alternatively, clubs can apply for a club machine permit, which would allow up to three machines in total, in Categories B4, C, and D.
- 5.27 Clubs must have at least 25 members, and must be established wholly or mainly for purposes other than gaming, unless covered by separate regulations. Bridge and whist clubs are expected to be provided for in regulations to be issued.

- 6 Statement of Principles.

6.1 The full draft Statement is set out in Appendix 1 to this report. It has been based on a model prepared by a group of officers from various Hampshire authorities, based on a template prepared by LACORS (the Local Authorities' Co-ordinators of Regulatory Services). Whilst it is recognised that each council's Statement will be different, it is intended that the model should be used as a basis for such policies, so that there is a degree of consistency across the County. Many consultees (such as national trade representatives, and the Police) will be dealing with policies from across Hampshire, and having a policy which is based on the same model will clearly make this part of the process easier.

6.2 The Statement has been drafted in accordance with the provisions in the Act, Regulations, and the Commission's Guidance. As much of the contents and structure of the Statement are dictated by these provisions, the Council has limited discretion on what can and cannot be included in it. There are a number of matters that the Council, as Licensing Authority, cannot consider, including moral objections to gambling, considerations around planning or the likelihood of applications being granted planning permission and finally the demand for gambling premises.

7 Consultation Arrangements

7.1 The consultation arrangements are set out at the start of the draft Statement. The Council is required to consult the Police, one or more persons who appear to the Council to represent the interests of persons carrying on gambling businesses in the district; and one or more persons who appear to the Council to represent the interests of persons who are likely to be affected by the exercise of the Council's functions under the Act.

7.2 Following approval of the draft Statement by this Committee, the Statement will be published as a consultation draft, and sent to the Police. It will be made available on the website. Letters of consultation will be sent to other consultees, explaining the process, and referring to the website if consultees wish to look at the draft Statement. A paper copy will be sent to anyone who requests one.

7.3 The consultation period will run until 29 September 2006, after which the responses will be collated and a report presented to a special meeting of the Committee on 24 October 2006. A final version will then be presented for adoption to Council at its meeting of 1 November 2006, and the statutory publicity arrangements made by 3 January 2007. The Statement will come into effect on 31 January 2007.

8 Fees

8.1 DCMS has committed to Excellent Authorities being allowed to set their own fees, subject to cost recovery. Fees for other authorities are likely to be fixed by Regulations.

9 Timetable

9.1 The current implementation timetable states that Licensing Authorities will start accepting transitional applications from 31st January 2007, with the Act becoming fully operational in September 2007. It is noted that these dates are subject to change.

OTHER CONSIDERATIONS:

10 CORPORATE STRATEGY (RELEVANCE TO):

10.1 The Statement of Principles relates to the “Safer and More Inclusive Communities” Priority, including:-

- Increase feelings of safety by reducing the likelihood that people will indulge in anti-social behaviour and continue to collaborate with our partners to continue to drive down levels of crime generally;
- Improve access to services and to cultural opportunities for residents

11 RESOURCE IMPLICATIONS:

11.1 Given the likely level of applications, it is likely that costs can be maintained within existing budgets, supplemented by the statutory fees.

BACKGROUND DOCUMENTS:

Guidance to Licensing Authorities – Gambling Commission April 2006

APPENDICES:

Appendix 1 – draft Statement of Principles